IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. OF 2004
IN
EXECUTION APPLICATION NO.587 OF 2003
IN
SUIT NO.2853 OF 1996

Ramkumar Daga & Anr. ..Plaintiffs.

Vs.

M.R. & D.R. thacker
& Ors. ..Defendants.

And

Mahendra R. Thacker ..Respondents.

Mr.Shailesh Shah i/b.M/s.Mansukhlal Hiralal & Co., Advocate for the Plaintiffs.

Mr.Mahendra Ghelani i/b.Law Charter for the Defendants.

CORAM: S.U.KAMDAR, J.
DATED: 13TH DECEMBER, 2004

P.C. :

There shall be an ad-interim order in terms of prayer clause (b). The contention between the parties pertains to appropriate interpretation of the consent terms dated 23.1.2001 which has been taken on record and a decree in terms of consent terms was passed.

2. The learned counsel for the Plaintiffs contend

that the decree is not executable inasmuch as under the terms and conditions of the consent terms once the MHADA has claimed the FSI area, the Plaintiffs are not entitled to the benefit of clause 10(a) of the said consent terms.

3. On the other hand, the learned counsel for the Respondent contends that MHADA has claimed the area much prior to the filing of the consent terms. However, clause 11(a) provides that the intimation of such claim is to be made to the Plaintiff herein within three days. Admittedly, the area has not been handed over. It is also an admitted position by the Defendants that the flat is proposed to be sold by the Defendants herein. Rival contentions of the parties are required to be adjudicated in the Chamber Summons. Thus, pending the disposal of Chamber Summons, properties are required to be protected.

4. The Defendants state that they have filed substantive suit challenging the validity of the consent terms. No interim orders are passed in the said suit.

5. In the circumstances, I cannot disregard the

consent terms. Hence, the Chamber Summons is made returnable on 17th January, 2005. In the aforesaid circumstances, ad-interim order in terms of prayer clause (b) as prayed.

6. The learned counsel for the Defendants seeks a stay of the operation of this order. This being an ad-interim order, the question of granting the stay does not arise. Hence, the request is rejected.

The Defendants waive service.